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13 UNITED STATES DISTRICT COURT

14 FOR THE CENTRAL DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA,
16 Plaintiff,
17 v.
18 \$200,000.00 IN U.S. CURRENCY,
19 Defendants.

20 JASMOL SINGH,
21 Claimant.

Case No. 2:22-CV-7443-AB-PD

GOVERNMENT'S L.R. 16-10 TRIAL
BRIEF

Date: Feb. 27, 2024
Time: 8:30 a.m.
Location: Courtroom of the
Hon. André Birotte, Jr.

1 Plaintiff United States of America, by and through its counsel
2 of record, the United States Attorney for the Central District of
3 California and Assistant United States Attorneys Dan G. Boyle and
4 Alexander Su, submits its Trial Brief pursuant to Civil Local Rule
5 16-10.

6 This Trial Brief is based upon the attached memorandum of points
7 and authorities, the files and records in this case, and such further
8 evidence and argument as the Court may permit.

9
10 Dated: February 20, 2024

Respectfully submitted,

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TRIAL BRIEF**I. INTRODUCTION**

As the Court is aware, the United States commenced this forfeiture action against defendant \$200,000.00 in U.S. Currency (the "Defendant Currency") pursuant to 21 U.S.C. § 881, alleging that the Defendant Currency consisted of narcotics proceeds. During a December 8, 2023 hearing, the Court verbally granted the government's motion for partial summary judgment (Dkt. 62), ruling that the Defendant Currency was proceeds of drug trafficking, and thus, subject to forfeiture. See also Court's Written Order (Dkt. 74). Accordingly, the government has carried its burden, and trial here will be limited to Claimant Jasmol Singh's proffered affirmative defense that he is an innocent owner of the Defendant Currency pursuant to 18 U.S.C. § 983(d)(3) and (6).

The government submits this Trial Brief pursuant to L.R. 16-10, as well as paragraph III.I of the Court's standing Civil Jury Trial Order, in order to update the Court following the parties' previously-filed Memorandum of Contentions of Fact and Law (Dkt. 64 & 71), and to address other anticipated unusual issues considering the posture of trial in this action.

II. THE COURT'S RULINGS AT THE PRETRIAL CONFERENCE

On February 2, 2024, the Court held the Pretrial Conference (see Dkt. 87), and reached the following rulings:

A. Order and Procedure Of Trial

Following partial summary judgment in the government's favor, the Court ruled that Claimant will give the first opening statement, lasting no more than 15 minutes, followed by the government's opening statement, also lasting no more than 15 minutes. The government will

1 then read the parties' fact stipulation into the record, and Claimant
2 will then present his case-in-chief, followed by the government's
3 case-in-chief. The Court held that each party shall have no more than
4 3 hours to present its case, inclusive of cross-examination, absent
5 further order from the Court. At the close of all evidence, Claimant
6 will make his summation, lasting no longer than 30 minutes, followed
7 by the government's summation, also lasting no longer than 30
8 minutes, and then any rebuttal by Claimant.¹

9 **B. The Court Granted All Of The Government's Motions-in-Limine**

10 The Court granted the Government's two motions-in-limine
11 ("MILs"), which Claimant declined to oppose in substance. The
12 government's first MIL sought to preclude any evidence not previously
13 produced (Dkt. 65) and its second MIL sought to preclude
14 questioning, evidence, or arguments pertaining to affirmative
15 defenses not properly before the jury (Dkt. 66).

16 **C. The Court Granted One And Denied One Of Claimant's Motions-**
17 **in-Limine**

18 The Court further ruled on Claimant's two MILs, which sought to
19 preclude evidence regarding a drug dog search (Dkt. 73) and to
20 preclude evidence regarding the inspection of a dollar bill (Id.).
21 The Court granted the first MIL and denied the second MIL. Dkt. 87.

22 **D. The Court's Rulings On Claimant's Proposed Witnesses**

23 The Court also ruled that Claimant must choose between calling
24 DEA Special Agent Heja Rosebiani or DEA Task Force Officer ("TFO")
25 Mark Carroll in Claimant's case-in-chief. The Court also permitted
26 _____

27 ¹ Because the Court did not set a time limit for rebuttal, the
28 government presumes that Claimant will need to reserve time for
rebuttal, consistent with ordinary practice for bifurcated timed
arguments, such as appellate argument.

1 Claimant to call former DEA TFO Tyler Pope as a witness, but denied
2 Claimant's request to call Fontana Police Department Officer Nelson
3 Romero.

4 **III. IDENTIFICATION OF ANTICIPATED LEGAL AND EVIDENTIARY ISSUES**

5 **A. The Burden of Proof**

6 The parties agree that Claimant has the burden of proof, which
7 the Court recognized in setting the order and procedure of trial, as
8 discussed above. Accordingly, pursuant to Federal Rule of Civil
9 Procedure 50(a), the government may move for judgment as a matter of
10 law if, after hearing Claimant's case-in-chief, a reasonable jury
11 would not have a legally sufficient evidentiary basis to find for
12 Claimant on any required element of Claimant's proffered innocent
13 owner defense. The parties have stipulated to these elements in their
14 joint jury instructions. See Dkt. 78, at 31-32.

15 Rule 50 applies equally to all parties in action - plaintiffs
16 and defendants, see Fed. R. Civ. P. 50(a)(1) ("If a party has been
17 fully heard on an issue during a jury trial..." (emphasis added) - and
18 is a proper procedural tool for resolving affirmative defenses. For
19 example, in Jang v. Bos. Sci. Corp., Case No. ED-CV-05426-VAP-MRW,
20 2015 WL 13672836 (C.D. Cal. July 6, 2015), the plaintiff filed a
21 motion for judgment as a matter of law pursuant to Rule 50(a) after
22 the defendant had rested its case, which the court granted, finding
23 that "no reasonable jury could find in Defendant's favor on this
24 affirmative defense." The government reserves the right to make such
25 a motion at the close of Claimant's case-in-chief.

1 **B. Claimant's Intended Direct Examination Of TFO Carroll Could**
2 **Contravene The Court's Exclusion Of Questioning, Evidence,**
3 **And Argument That Goes To Non-Innocent Owner Defenses**

4 Following the Final Pretrial Conference, Claimant informed the
5 government that he intends to call TFO Carroll as a witness in his
6 case-in-chief.

7 While the Court has permitted Claimant to call TFO Carroll, the
8 government submits that the Court's order granting the government's
9 MIL No. 2 (Dkt. 66), will limit the scope of questioning for TFO
10 Carroll. Claimant is now barred from seeking to question TFO Carroll
11 on matters relating to any alleged Fourth Amendment violations (i.e.,
12 suppression of evidence) or purported "outrageous government
13 conduct." See Dkt. 66 (Gov. MIL No. 2), at 5-6. As the government
14 argued in its MIL No. 2, which Claimant elected not to oppose,
15 Claimant has had his opportunity to raise these issues and elected
16 not to do so. Because neither of these issues addresses the agreed-
17 upon elements of the innocent owner defense, any such questions would
18 be barred by the Court's order on the government's MIL No. 2.

19 Nonetheless, based on Claimant's Response to the government's
20 objections (Dkt. 85) and his deposition of TFO Carroll, the
21 government believes that Claimant's intended questioning may seek to
22 improperly impeach TFO Carroll on direct exam regarding an affidavit
23 sworn-to by TFO Carroll seeking, among other things, a warrant to
24 wiretap Claimant's phone. This can only be construed as an effort to
25 confuse the jury as to Claimant's burden. As the Court recognized in
26 granting the government's motion, the time to make suppression
27 arguments has come and gone. As such, the only purpose of asking
28 questions on direct exam that would challenge the accuracy of TFO

1 Carroll's affidavit would be to confuse the jury by trying to
2 challenge the grounds for the seizure of the Defendant Currency.

3 To the extent that Claimant seeks to question TFO Carroll on
4 matters which do not relate to Claimant's innocent ownership defense,
5 the government intends to object and may seek any other appropriate
6 relief as necessary during trial.²

7 **C. Claimant Will Not Be Calling Former TFO Tyler Pope And The**
8 **Parties Will Instead Rely On Deposition Testimony**

9 Since the Pretrial Conference, the parties learned that, due to
10 the one-week continuance of trial, Officer Pope is not available to
11 appear at trial. As a result, Claimant has informed the government
12 that he is willing to stipulate to Officer Pope's unavailability such
13 that the parties would rely on the certified transcript of Officer
14 Pope's deposition. Claimant has stated that he will offer a witness
15 yet to be determined who will read portions of Officer Pope's
16 testimony into the record, and the government will designate portions
17 of Officer Pope's deposition testimony in place of cross-examination.
18 Pursuant to Fed.R.Civ.P. 30(c)(2), all objections preserved on the
19 record may be raised at trial, as well as any other objections
20 subject to Fed.R.Civ.P. 32(b). In particular, the reserves reserves
21 the right to object on hearsay grounds where no relevant hearsay
22 exception applies.

23
24
25 ² Claimant also continues to assert that he has an excessive
26 fines argument if the jury does not side with him. As previously
27 briefed, the excessive fines defense is foreclosed by Ninth Circuit
28 law. See, e.g., United States v. Real Prop. Located at 22 Santa
Barbara Drive, 264 F. 3d 860, 875 (9th Cir. 2001); Govt's MIL No. 2,
§ III.C at 8:13-8:20. However, this issue does not need to be
resolved pre-trial.

1 **D. The Government Intends To Introduce Compilations of**
2 **Reconstructions Of Claimant's WhatsApp Messages, Which Were**
3 **Produced In Native Format**

4 To streamline the presentation of evidence for the jury, the
5 government intends to use summary charts regarding Claimant's bank
6 records and communications relating to certain transactions.

7 Charts and summaries of evidence are governed by Federal Rule of
8 Evidence 1006, which permits the introduction of charts, summaries,
9 or calculations of voluminous writings, recordings, or photographs
10 which cannot conveniently be examined in court. See Fed. R. Evid.
11 1006. Accordingly, a summary chart may be admitted as substantive
12 evidence when the proponent establishes that the underlying documents
13 upon which the summary is based are voluminous, admissible, and
14 available for inspection. Id; see also United States v. Meyers, 847
15 F.2d 1408, 1412 (9th Cir. 1988). All that is required for the rule to
16 apply is that the underlying writings be voluminous and that in-court
17 examination not be convenient. United States v. Scales, 594 F.2d 558,
18 562 (6th Cir. 1979) (admitting charts summarizing charges in
19 indictment and overt acts evidencing conspiracy charge). Although
20 the materials underlying the summary must be "admissible," they need
21 not themselves be "admitted" into evidence. Meyers, 847 F.2d at 1412.

22 In addition, the summary chart must be accurate, authentic, and
23 properly introduced. Scales, 594 F.2d at 563. Where a chart does not
24 contain complicated calculations that would require an expert for
25 accuracy, authentication of the chart requires only that the witness
26 (1) have properly catalogued the exhibits and records upon which the
27 chart is based and (2) have knowledge of the analysis of the records
28 referred to in the chart. Id. Neither of these requirements

1 necessitates any special expertise. Id. In addition, summary charts
2 may be used by the government in its opening statement. See United
3 States v. De Peri, 778 F.2d 963, 979 (3d Cir. 1985) (approving
4 government's use of chart); United States v. Rubino, 431 F.2d 284,
5 289-90 (6th Cir. 1970) (same).

6 Here, the government has produced the underlying data for each
7 of its proposed summary exhibits, as reflected on the government's
8 Exhibit List. See ECF No. 68 (identifying GEXs 14-17 as summary
9 charts, and identifying underlying documents). These documents exceed
10 hundreds of pages of text, as well as hundreds of multimedia files,
11 and could thus not be easily examined by the Jury or Court absent
12 summary form.³ In addition, the government has produced the proposed
13 summary charts to Claimant's counsel, satisfying Rule 1006's
14 requirement that the opposing party be given reasonable time to
15 examine any proposed summaries.

16 **E. The Government Intends To Introduce the Expert Report of**
17 **Retired IRS-CI Agent Peter Platt**

18 To further streamline the presentation of evidence in accordance
19 with the Court's set time limits, the government intends to introduce
20 the report of the government's retained expert, Peter Platt, in order
21 to limit direct testimony as to specific opinions and conclusions
22

23 ³ As a separate matter, certain of the materials summarized
24 include logs from a data archive file produced by defendant of his
25 communications with his contacts in Mexico. Where the government
26 intends to offer specific messages into evidence from these archive
27 files - as opposed to summarizing the content of the files in their
28 entirety - then pursuant to Federal Rule of Evidence 1003, the
government has reconstructed such messages from the underlying data
files, as the native files break up message content by file type
(e.g., images, media, emojis, audios, text) and thus cannot be easily
read in native format. The government anticipates that SA Rosebani
will testify to the reconstructed files and comparisons to the native
originals.

1 reached. A copy of Mr. Platt's report is attached to this report at
2 Exhibit A.

3 Mr. Platt was properly noticed as an expert for the government
4 during discovery on September 12, 2023. Mr. Platt's report was
5 produced to Claimant during discovery, and has been identified on the
6 government's Exhibit List. See ECF No. 68 (identifying GEXs 18 as
7 "Expert Report of Peter Platt"). Claimant ultimately elected not to
8 depose Mr. Platt during the expert discovery period, but Mr. Platt's
9 report is signed and dated, and the government expects that Mr. Platt
10 will be present at trial and available to be cross examined on his
11 opinions and analysis.

12 Pursuant to Federal Rule of Evidence 703, an expert witness may
13 rely on admissible and inadmissible evidence in reaching an opinion,
14 but "if the facts or data would otherwise be inadmissible, the
15 proponent of the opinion may disclose them to the jury only if their
16 probative value in helping the jury evaluate the opinion
17 substantially outweighs their prejudicial effect." Here, Mr. Platt's
18 report largely relies on an analysis of Claimant's own bank records,
19 which are non-hearsay business records and would otherwise be
20 admissible evidence under Federal Rule of Evidence 803(6). Similarly,
21 Mr. Platt reviewed Claimant's discovery responses, which are
22 admissible as party-opponent admissions. While Mr. Platt also
23 identifies a small number of publications he reviewed in preparing
24 his report, his report only cites to those publications in limited
25 respects, and these citations will be important to help the jury
26 understand the sources of regulatory guidance upon which Mr. Platt
27 bases his analysis, and in particular, guidance by the Financial
28

1 Crimes Enforcement Network ("FinCEN") and similar regulators. See,
2 e.g., Ex. A, at ¶ 18.3 (quoting FinCEN guidance).

3 Considering the time limitations on the parties, admission of
4 Mr. Platt's report in lieu of a detailed recitation of the data
5 stated therein would be an efficient use of the Court and Jury's time
6 - while still allowing for cross examination of Mr. Platt by
7 Claimant. See e.g., Televisa, S.A. de C.V. v. Univision Commc'ns,
8 Inc., 635 F. Supp. 2d 1106, 1110 (C.D. Cal. 2009) (admitting expert
9 report under F.R.E. 807 where opposing party had opportunity to
10 cross-examine expert in earlier deposition and "[s]ince the item in
11 question is a report prepared by a designated expert witness, rather
12 than a remark or statement, many of the classic hearsay risks, such
13 as faulty perception, faulty memory, and faulty narration do not seem
14 to be of concern."). As the Court can see upon review of Mr. Platt's
15 report, it includes detailed analysis of hundreds of pages of bank
16 records for Claimant's company ("Phone Traders"), including detailed
17 recitations of dates, transactions, and amounts. See, e.g., Ex. A, ¶¶

18 //

19 //

1 17.7, 17.8, 17.9, 17.13, and 17.14. Reciting such data to the Jury is
2 unlikely to be an efficient use of the limited time, but is necessary
3 to support Mr. Platt's conclusions.
4

5 Dated: February 20, 2024

Respectfully submitted,

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